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**OFFICE OF PETITIONS**

In re Application of	:	
Herron et al.	:	DECISION ON PETITION TO
Application No. 09/877,635	:	WITHDRAW HOLDING OF
Filed: 8 June, 2001	:	ABANDONMENT
Atty Docket No. 3278.2US	:	

This is a decision on the petition filed on 17 October, 2005, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on 25 January, 2005, which set a one (1) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 27 September, 2005.

Petitioners assert that the Office communication mailed on 25 January, 2005, was never received.

In the absence of any irregularity in the mailing of an Office communication, there is a strong presumption that the Office letter was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and

docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.


A review of the record indicates that the Office action was properly mailed to the petitioners at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioners have submitted a statement by the practitioner that the file jacket and docket records were searched, indicating a lack of receipt of the Office communication. A copy of petitioners' docket record is included with the petition and referenced therein.

The petitioner has made a sufficient showing of nonreceipt of the Office action. Accordingly, the holding of abandonment is withdrawn.

The application file is being referred to Technology Center 1600 technical support staff for remailing of the Notice mailed on 25 January, 2005. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

  
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Office of Petitions